THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.19439 OF 2007

Dated 13th September, 2007

Between:

M/s Godavari Enterprises …Petitioner

And

The Appellate Deputy Commissioner …Respondent

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.19439 OF 2007

O R D E R (Per the Hon'ble Sri Justice Bilal Nazki):

Heard learned counsel for the parties. Learned Special Standing Counsel for Commercial Taxes has no objection if the writ petition is disposed of at this stage.

The petitioner is aggrieved of the order passed by the Appellate Deputy Commissioner-respondent on 13-07-2006 rejecting the appeal filed by him on the ground that 12.5% of the disputed tax was not paid in terms of second proviso to Section 31 (1) of the Andhra Pradesh Value Added Tax Act, 2005 (for short "the Act"). According to the learned counsel for the petitioner, the restriction imposed, on filing the appeal, under Section 31 of the Act to deposit 12.5% of the disputed tax is only with respect to those appeals, which are filed against levy of tax and not against the appeals which are filed against levy of penalty. The present appeal had been filed by the petitioner against an order of penalty and as such, second proviso to Section 31 (1) of the Act is not applicable.

Learned Special Standing Counsel for Commercial Taxes could not defend the order of the respondent as the language of the second proviso to Section 31 (1) of the Act is so clear that only one interpretation to this proviso is possible that an appellant is bound to deposit 12.5% of the disputed tax provided an appeal is filed against the demand of tax and not any other demand.

Second proviso to Section 31 (1) of the Act reads as under:

> "Provided further that an appeal so preferred shall not be admitted by the appellate authority concerned unless the dealer produces proof of payment of tax admitted to be due, or of such installments as have been granted, and the proof of payment of twelve and half percent of the difference of the tax assessed by the authority prescribed and the tax admitted by the appellant, for the relevant tax

period, in respect of which the appeal is preferred."

In this view of the matter, we allow this writ petition, set aside the order dated 13-07-2006 passed by the respondent and direct him to take back the appeal on record and decide it on merits. No order as to costs.

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Bilal Nazki,J

Dated 13th September, 2007

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Ramesh Ranganathan,J

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